

**EXHIBIT E TO THE JUNE 26, 2008  
DECLARATION OF GREGORY I. RASIN, ESQ.**

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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JANNIE PILGRIM, GIOVANNA HENSON, JESAN

SPENCER and BRENDA CURTIS,

Plaintiffs,

- against -

CASE NO.: 07CIV 6618

THE MCGRAW-HILL COMPANIES, INC.,

Defendant.

-----X

DEPOSITION OF WILLIAM HARPER, taken by

Plaintiffs, pursuant to Notice on Wednesday, April

9, 2008, commencing at 9:43 a.m., before Chandra D.

Brown, a Registered Professional Reporter and Notary

Public within and for the State of New York.

1 W. Harper

2 Q Which performance document did you review?

3 A I reviewed five documents, performance  
4 appraisals for Jesan Spencer, performance year 2000  
5 to performance year 2004.

6 Q You said there were five.

7 Are those the five?

8 A Correct.

9 Q The note was related to any one of those  
10 PMPs?

11 A Yes.

12 Q Can you define what that note was?

13 A Not clearly. It had something to do with  
14 clients of Jesan's.

15 Q When you say "clients," you mean customers  
16 for the BusinessWeek H/R department; is that  
17 correct?

18 A That's correct.

19 Q Which would be other segments of the  
20 company, correct?

21 It's not independent clients from outside  
22 of the company?

23 A Correct.

24 Q So the word "client" means either customer  
25 or other sections of the company?

1 W. Harper

2 A Correct.

3 MR. RASIN: Objection.

4 Q What did that note say?

5 A I don't recall. Something about Jessica's  
6 performance but I don't specifically recall.

7 Q Why did you review the five performance  
8 evaluations of Jesan Spencer?

9 A It was my understanding that that would be  
10 the subject of our conversation today.

11 Q What payroll records did you review?

12 A There was a payroll record identifying  
13 Jesan's exit or executing Jesan's exit.

14 Q Can you be more specific?

15 Was that a paycheck or a closing-out  
16 statement, like a closing-out personnel statement?

17 MR. RASIN: Objection.

18 You can answer.

19 A It was a payroll document that requested  
20 payroll to end her employment.

21 Q There is a name for that kind of a  
22 document, isn't there?

23 A Yes.

24 Q What is that name?

25 A I don't know the name of that document

1 W. Harper

2 offhand.

3 Q What do you recall about that document?

4 A I recall it had "last day worked," which  
5 is the termination date, and it had a statement on  
6 it that indicated that Jesan should not be rehired.

7 Q Do you recall what the payroll was, what  
8 her payroll was on that last day -- or what her pay  
9 was on that last date of termination?

10 A No. I don't think the document had a  
11 statement of her salary, if that's what you're  
12 asking for, or what her last check would have been,  
13 no.

14 Q Who is Jesan Spencer?

15 A Jesan Spencer is an employee, was an  
16 employee of McGraw-Hill.

17 Q Do you know anything more than that?

18 A Yes, I do.

19 Q Who is Jesan Spencer?

20 A I'm not sure I understand your question.

21 Q Where was she employed?

22 A She was employed at McGraw-Hill. She was  
23 employed through the performance years I described  
24 and beyond.

25 She, at one point, was a direct report of

1 W. Harper

2 mine. She was in Human Resources.

3 Q When she was a direct report of yours,  
4 what was your position?

5 A I was senior director of Human Resources  
6 for four businesses at McGraw-Hill.

7 Q Which four businesses?

8 A BusinessWeek magazine, PLATTS, Aviation  
9 Week Group and Healthcare Information Services.

10 Q During what period were you Jesan  
11 Spencer's direct -- were you the person to whom she  
12 was a direct report?

13 A Through performance year 2000 to  
14 performance year 2004.

15 Q What was her position?

16 You said she was a direct report; did she  
17 have a specific title?

18 A Yes, she did.

19 Her title was, I believe, manager, H/R  
20 manager.

21 Q In which one of the four businesses?

22 MR. RASIN: Objection.

23 A She primarily was responsible for  
24 BusinessWeek and Aviation Week. More responsible --  
25 most of her work was focused on BusinessWeek,

1 W. Harper

2 however.

3 Q As an H/R manager?

4 A Yes.

5 Q That was during the period 2000 to 2004?

6 A Correct.

7 Q Did her position change after 2004?

8 A No.

9 Q Did she remain a direct report to you  
10 after 2004?

11 A No, she didn't.

12 Q Do you know who her direct reports were  
13 after 2004?

14 A Can you restate that question?

15 Q Do you know who -- to whom did she report  
16 as a direct report after 2004?

17 A Yes. After 2004, she reported to a  
18 gentleman named Ken Caruso.

19 Q What was his position or title?

20 A I believe his position was senior director  
21 of H/R.

22 Q Over BusinessWeek?

23 A Over BusinessWeek.

24 Q Who was his supervisor or to whom did he  
25 directly report?

1 W. Harper

2 A Right. He reported to a gentleman named  
3 Brett Marschke.

4 Q What was his position?

5 A Vice president.

6 Q Vice president of?

7 A Of Human Resources for the information and  
8 media group.

9 Q That incorporated BusinessWeek?

10 A Correct.

11 Q PLATTS?

12 A Yes.

13 Q Aviation Week?

14 A Yes.

15 Q And Health Services?

16 A Well, by the time Brett took over the  
17 vice-president role, we had divested Healthcare, the  
18 Healthcare Information Group.

19 Q That was divested when?

20 A I think in 2001 into 2002.

21 Q In 2005, from the beginning of 2005 to the  
22 present, what position do you have with the company?

23 A I am vice president of Human Resources for  
24 a group called the business information group.

25 Q That group includes BusinessWeek and



1 W. Harper

2 MR. RASIN: Objection..

3 A In 2004, the corporation instituted a  
4 performance evaluation process that includes a  
5 automated tool.

6 And, yes, there was a series of training  
7 courses across the company on how to use the tool  
8 and manage performance with the tool.

9 And then, years subsequent to the formal  
10 launch, we have refresher courses.

11 Q Is there a name for this program?

12 A Yes. It's called PMP.

13 Q Training?

14 A PMP training?

15 Q The program that you instituted as a tool,  
16 an automatic tool or automated tool --

17 A Right.

18 Q -- that's called PMP?

19 A PMP.

20 Q Would a person like Rich Fisher be  
21 expected to attend such program?

22 A To my knowledge, yes.

23 Q Ken Caruso?

24 A Yes.

25 Q Sheila O'Neill.

1 W. Harper

2 A Yes.

3 Q Sarah McCauly?

4 A I assume. To my knowledge, all the H/R  
5 function leaders, to my knowledge, were involved in  
6 and helped to roll out, if you will, the PMP  
7 training.

8 Q How about a person like Vlad Stadnyk?

9 A Vlad's not in H/R.

10 Q So persons that are not in H/R did not get  
11 such a roll-out program, training program?

12 A I can't speak to what every leader in the  
13 company was involved in, but the rollout of PMP was  
14 lead by H/R within the company.

15 Q But was it lead by H/R to H/R only, or was  
16 it lead by H/R to other managers and supervisors in  
17 the company?

18 A Yeah. The PMP training was lead by H/R  
19 and, for the most part, my understanding is  
20 facilitated by H/R, but it was for leaders, managers  
21 in the line.

22 Q Now, PMPs in 2005, were they significantly  
23 different than PMPs in prior years, in terms of the  
24 language of the form?

25 A Yeah. The first performance year that was

1 W. Harper

2 documented under the new system was 2004. And then,  
3 of course, from 2004 beyond, we've used that system.

4 Q You said it included some sort of -- I  
5 think the word you used was automated program.

6 A Tool. Automated tool.

7 Q Automated tool?

8 A Right.

9 Q What does that mean?

10 A What does automated tool mean?

11 Q What does it mean in relation to PMP?

12 Was it on the computer?

13 A Yes.

14 Q And questions and answers would be put  
15 into the computer?

16 A Goals would be put into the computer.  
17 Performance-evaluation comments would be put into  
18 the computer, into the system. The actual  
19 evaluation would be put into the PMP system.  
20 Employee comments, manager comments, electronic  
21 signatures. I think that covers it.

22 Q Now, the idea of goals that are put into  
23 the more modern PMP, how were those goals derived?

24 MR. RASIN: Objection.

25 Q Or expected to be derived?

1 W. Harper

2 A Pretty prominent role, I believe.

3 Q Can you be more specific?

4 A I'm not sure what you're asking me.

5 Q You said "prominent role"?

6 A It was my recommendation that we hire

7 Jesan.

8 Q And that recommendation was, you say

9 "prominent," so it carried a lot of weight.

10 Is that what you would say?

11 A Yes. It carried a lot of weight.

12 Q What position did Jesan Spencer go into?

13 A She was the -- we hired her as the manager

14 of Human Resources.

15 Q For which segment?

16 A As I mentioned, primarily for  
17 BusinessWeek, but also some support responsibility  
18 for Aviation Week, as a side.

19 Q Who was her direct report in this  
20 assignment?

21 A Who was her direct report?

22 Q To whom did she directly report as a  
23 manager?

24 A To me.

25 Q To you directly.

1 W. Harper

2 Was there anyone between you in the  
3 organization chart or was it a direct report to you?

4 A Direct report to me.

5 Q You wrote her evaluations, correct, her  
6 performance evaluations for a number of years?

7 A For performance year 2000 to 2004.

8 Q What do you recall about her performance?

9 A I recall that in 2000, it was a short  
10 performance year. She had just joined us.

11 So I rated her "target," which means she's  
12 meeting expectations.

13 Q And following that?

14 A In 2001, her rating was exceptional.

15 Q That's the overall rating was exceptional?

16 A That's right.

17 Q Is that a 4?

18 A At the time, that was a 4.

19 Q Did the exceptional status as a rating  
20 change?

21 A It did.

22 Q To what; to a 5?

23 A I'm sorry?

24 Q I'm sorry. I didn't mean to interrupt.

25 A Let me make sure I understand your

1 W. Harper

2 question.

3 Q You said that the exceptional rating  
4 changed from a 4 to something else.

5 What did it --

6 A Are you asking me about the scale, the  
7 rating scale?

8 Q Yes.

9 A Okay. As I mentioned, in performance  
10 year 2004, we changed tools and the scale was also  
11 changed from a five-point to a four-point.

12 Q So, what would a rating after 2004, what  
13 would a rating of exceptional be on a PMP  
14 evaluation?

15 A It would be that, exceptional.

16 Q A 4?

17 A No more numbers. In 2004, we went away  
18 from numbers.

19 Q And you moved into words?

20 A And moved to words.

21 Q What was Jesan's performance rated at  
22 in 2002? -----

23 A It was a 4.

24 Q When it's a 4 it means exceptional?

25 A Right.

1 W. Harper

2 Q And in 2003?

3 A It was a 3.

4 Q That means, "meets expectations"?

5 A Meets expectations.

6 Q In 2004?

7 A It was a 3.

8 Well, it was target. We moved to the  
9 word.

10 Q The word now is target, target  
11 expectations?

12 A Yes.

13 Q You were responsible for doing her  
14 evaluations, correct?

15 A For those performance years, yes.

16 Q By what process did you follow to do those  
17 evaluations?

18 MR. SOLOTOFF: Withdraw the question.

19 Q Did you follow the process that you  
20 described earlier today in doing those evaluations  
21 of Jesan Spencer?

22 MR. RASIN: Objection.

23 A Could I reread or could someone reread the  
24 process I described?

25 Q How about remembering what you -- let me

1 W. Harper

2 In general, sure, she was credible.

3 Q Did she appear to you as having the  
4 interest of the company at heart during the period  
5 of time that she was working under you?

6 A Yes. It appeared to me that she cared  
7 about her work and cared about the people that she  
8 worked with and for and wanted to do good work, good  
9 H/R work.

10 Q Do you know whether she received any  
11 bonuses?

12 A Yes.

13 Q Do you recall what kind of bonuses she  
14 received?

15 MR. RASIN: Objection.

16 A I don't have a perfect memory around that.  
17 I recall in 2004, she received a spot bonus.

18 Q What is a spot bonus?

19 A That's a bonus that a manager can give an  
20 employee for a job well done.

21 Q Was that done by you?

22 A Yes.

23 Q What do you have to go through in order to  
24 arrange for such a bonus to be given?

25 Is there a form you have to fill out?



1 W. Harper

2 A Yes.

3 Q That goes to where?

4 A It would go to my leader.

5 Q I would rather use names if I can, so that  
6 we can understand the record best.

7 It would go to whom?

8 A Well, at the time in 2004, performance  
9 year 2004, the spot bonus form would go to Brett.  
10 Marsche.

11 Q And he would have to approve it?

12 A And he would have to approve it in order  
13 for it to be paid.

14 Q Based on your experience with Jesan while  
15 she was working under you, was she able to  
16 communicate with her clients or customers?

17 A Can you ask that question again, please?

18 Q I'll rephrase it.

19 What did you recognize about her regarding  
20 her communication skills?

21 A What did I recognize about her  
22 communication skills?

23 Q Yes.

24 A That in employee relations situations,  
25 Jesan effectively communicated; that in training,

1 W. Harper

2 stand-up training events, Jesan mostly communicated  
3 well, but there were times where she wasn't as  
4 effective.

5 Q When you refer to employee relations, does  
6 that have a specific meaning to you at McGraw-Hill?

7 The words "employee relations," what does  
8 that encompass?

9 MR. RASIN: Objection.

10 A Employee relations in this context is  
11 helping to manage conflicts that occur between  
12 employees and managers.

13 Q What kind of conflicts are we talking  
14 about in a general sense?

15 A Performance, poor-performance issues,  
16 excessive sick-leave incidents.

17 Q Anything else?

18 A An employee who feels that her manager,  
19 his or her manager, is not being fair.

20 Q When you said that you felt that she was  
21 effective -- she effectively communicated in her  
22 role in employee relations, did that include in  
23 regard to performance issues between employees and  
24 their supervisors, for example?

25 A That would include that.

1 W. Harper

2 A She specifically worked for Aviation Week.

3 Q What position did she leave in order to be  
4 assigned to the Aviation Week position?

5 A She left the H/R manager position that was  
6 supporting BusinessWeek.

7 Q What were the circumstances that lead to  
8 her being transferred to Aviation Week in the H/R  
9 manager's position, as you understand it?

10 A It was a transfer.

11 Q Who approved the transfer?

12 A My leader, Brett Marschke.

13 Q Did you have anything to do with her  
14 transferring into the H/R position in BusinessWeek?

15 MR. RASIN: Objection.

16 A You want to rephrase it?

17 Q I'll rephrase it.

18 Did you play any role in the decision to  
19 transfer Jesan Spencer to the H/R position, manager  
20 position under Aviation Week?

21 A Yes.

22 Q What role was that?

23 A I was the head of the function that  
24 ultimately was responsible for Aviation Week, and I  
25 accepted the transfer.

1 W. Harper

2 Q How did you learn about the decision to  
3 transfer Jesan Spencer from Brett Marschke?

4 MR. RASIN: Objection.

5 A I don't think the premise of the question  
6 is --

7 Q I'll rephrase it.

8 How did you learn of the decision to  
9 transfer Jesan Spencer to Aviation Week?

10 A This may be semantics: I didn't learn of  
11 the decision. The decision was made jointly between  
12 Brett and myself.

13 Q Did you meet together to discuss that  
14 decision?

15 A I don't think we met, no.

16 Q Was it by phone?

17 A It was by phone.

18 Q Who called whom?

19 A Brett called me.

20 Q And what did he say to you?

21 A He said that I had been asking -- I had  
22 been asking Brett for additional support, and he  
23 called to tell me that I could receive additional  
24 support and that he would be willing to sign off on  
25 a transfer of Jesan to my group.

1 W. Harper

2 Q What did you say?

3 A I said okay.

4 Q Tell us everything that Brett Marschke  
5 said and everything you said, other than what you've  
6 already testified to.

7 A I don't think I can tell you everything  
8 because I don't remember everything, but Brett  
9 called and said that he would be willing to transfer  
10 Jesan to the business information group H/R team,  
11 which was my team. And he indicated that Jesan was  
12 having some difficulty in BusinessWeek and would I  
13 be willing to accept the transfer.

14 Q Did he describe what that difficulty was?

15 A No.

16 Q Did he discuss with you anything about  
17 Mr. Caruso and Jesan?

18 A I don't recall.

19 Q Was this transfer to Aviation Week by  
20 Ms. Spencer, was that a voluntary transfer or an  
21 involuntary transfer?

22 A My understanding was that it was  
23 voluntary.

24 Q Where did you get that understanding from?

25 A From Brett.

1 W. Harper

2 Q Do you know to what extent Sheila O'Neill  
3 was involved in this process?

4 A I do not know.

5 Q Did the name Sheila O'Neill come up in the  
6 discussion of the transfer?

7 A No.

8 Q Did you have occasion to speak with Sheila  
9 O'Neill about the transfer of Jesan Spencer to  
10 Aviation Week?

11 A No.

12 Q Did you discuss with anyone in the  
13 company, other than Brett Marschke, the transfer of  
14 Jesan Spencer to aviation?

15 A Yes.

16 Q Who was that?

17 A Jesan Spencer.

18 Q Tell us, when was that conversation?

19 A I do not recall when it was. Certainly it  
20 was around the time that I had had the conversation  
21 with Brett. And I called to tell Jesan that I  
22 thought that she could add value to the business  
23 information group team and that if the transfer went  
24 through that I would be happy to have her as part of  
25 the team again.

1 W. Harper

2 Q What did she say to you, if anything?

3 A I don't remember exactly, but it was words  
4 to the effect of, "Good. Okay. I'm happy to  
5 return," or something.

6 Q When was this conversation with Jesan?

7 A I don't recall.

8 Q Was it by phone?

9 You said you called her.

10 A I believe it was by phone.

11 Q Okay.

12 Did you call her or she called you?

13 A I'm not sure.

14 Q How long was that conversation with Jesan  
15 Spencer?

16 A I can't recall.

17 Q A few minutes, an hour?

18 A It wasn't a long conversation.

19 Q So what would you briefly describe as not  
20 a long conversation?

21 What do you mean by that?

22 A Couple of minutes, three minutes.

23 Q To whom was Jesan Spencer required to  
24 report once she assumed her position as H/R manager  
25 as Aviation Week?

1 W. Harper

2 A Her direct manager was a lady named Toi  
3 Eaton, T-O-I.

4 Q Toi Eaton was a direct report to you?

5 A Correct.

6 Q What was her title?

7 A Director of Human Resources.

8 Q Now, how soon after you had this  
9 conversation with Jesan Spencer by phone concerning  
10 her transfer did she actually transfer into the  
11 position?

12 A I don't recall. Shortly thereafter.

13 Q Days, weeks?

14 A It wasn't more than weeks, but I don't  
15 recall.

16 Q Did there come a time where you learned  
17 that Jesan Spencer filed an EEOC complaint based on  
18 race discrimination with the company?

19 A Yes.

20 Q When did you learn of that?

21 A I really don't recall when I learned of  
22 that.

23 Q Did you know it at the time of the  
24 transfer?

25 A No.



1 W. Harper

2 Q Did you know whether she had complained  
3 about discrimination prior to the transfer to anyone  
4 in the company?

5 A No.

6 Q I think you said Sheila O'Neill was your  
7 direct report; is that correct?

8 A Today, yes.

9 Q She was not your direct report at the time  
10 of the transfer?

11 A At the time of Jesan's transfer?

12 Q Yes.

13 A That's correct.

14 Q She was?

15 A Was not.

16 Q Who was?

17 A Brett Marschke.

18 Q What was Sheila O'Neill's relationship to  
19 Brett Marschke in the scheme of the corporate  
20 structure?

21 A They were peers.

22 Q What was Jesan Spencer's job duties and  
23 responsibilities as Human Resource manager at  
24 Aviation Week?

25 A She was responsible for providing employee

1 W. Harper

2 relations support to Aviation Week. She was  
3 responsible for conducting training as needed for  
4 the team.

5 Q Anything else?

6 A No.

7 Q Again, employee relations is what you've  
8 already testified to, the definition of employee  
9 relations?

10 A Yes. Let me add that in addition to those  
11 two things, she was responsible for helping to  
12 evaluate the levels of positions in Aviation Week.

13 Q Anything else?

14 A No.

15 Q I think you said that Toi Eaton was a  
16 direct report to you; is that correct?

17 A That's correct.

18 Q Was she required to provide support  
19 material and information in order to help you  
20 prepare your MORs?

21 A Yes.

22 Q Did she require Jesan Spencer, to your  
23 knowledge, to provide material information, her  
24 activities and goals, to assist Toi Eaton in  
25 providing that information?

1 W. Harper

2 Q But were they?

3 Do you know of jobs that were filled  
4 before they were posted?

5 A No.

6 Q Wasn't that an expressed concern at the  
7 meeting by the participants?

8 A It's referenced in the document for sure.

9 Like I said, I'm not sure how many people  
10 agreed or disagreed with that statement.

11 Q Do you recall whether the statement was  
12 made?

13 A I don't really recall.

14 Q Did you create a job performance  
15 evaluation for Jesan Spencer for 2006?

16 A No.

17 Q Do you know what job duties and  
18 responsibilities Jesan Spencer was given to perform,  
19 other than what you've already testified to, after  
20 she was transferred under Toi Eaton?

21 A Other than what I've already testified to?

22 Q Yes.

23 A I'm not familiar with any other  
24 responsibilities other than what I've already said.

25 Q Do you know whether she was given specific

1 W. Harper

2 job duties to perform?

3 A I definitely know that she was, yes.

4 Q What do you definitely know?

5 What job duties?

6 A The duties I testified to earlier.

7 Q What evaluations was she required to

8 perform?

9 A What evaluations was Jesan required to  
10 perform?

11 Q Yes. That she performed in this period of  
12 time, from the date of her transfer to the date she  
13 left her employment?

14 A The duties that she was assigned, as I  
15 testified to earlier, were employee relations,  
16 evaluations, and other H/R-related duties.

17 Q Jesan Spencer complains that she was given  
18 very little and/or nothing to do.

19 Is that statement true or false?

20 A Since I didn't manage Jesan, I can't say  
21 with certainty what she was specifically asked to  
22 do.

23 I could tell you what my impressions were,  
24 and I think I just did.

25 Q Do you know what evaluations she performed

1 W. Harper

2 or worked on?

3 MR. RASIN: I'm not sure I understand your  
4 question.

5 You're asking which employees she  
6 evaluated?

7 MR. SOLOTOFF: Yes.

8 A Jesan didn't have any direct reports so  
9 she wouldn't have evaluated others' performance.

10 Q But it was her job to assist others in  
11 doing evaluations, correct?

12 A That could be an H/R-related  
13 responsibility, sure.

14 Q Do you know what she was specifically  
15 assigned regarding evaluations?

16 A No.

17 Q Do you know what specific employee  
18 relations duties she was specifically assigned?

19 A I remember some employee investigations  
20 that Jesan was working on. I don't remember the  
21 specifics of those investigations, but I remember  
22 there were some employee relations issues that she  
23 was managing with Toi's help.

24 Q What was the name of that individual  
25 evaluation?

1 W. Harper

2 A I don't recall.

3 Q Do you know whether she was given any  
4 training, specific training jobs to do?

5 A Yes.

6 Q Which one were those?

7 A Every year we conduct  
8 performance-evaluation training on the system that I  
9 described earlier, and I know Jesan lead a number of  
10 sessions for her client group.

11 Q That was while she was under Ken Caruso,  
12 correct?

13 A I'm speaking about when she was with the  
14 business information group.

15 Q How many days were those training  
16 programs?

17 A How many days in length?

18 Q Yes.

19 A I don't know. I don't think they were  
20 more than a day. I think they were maybe less than  
21 a day, half day or something like that.

22 Q .. How many were there?

23 A I don't recall.

24 Q Are you familiar with a meeting involving  
25 African Americans with Terry McGraw and David Murphy